Council as to payment or refund of costs. Reference was made to the Order of Court made in *S. S. T. Sockalingam Chettiar* v. *Shaik Sahied bin Abdullah Bajerai* (Singapore Suit No. 1448 of 1930). The Court decided to follow the order made in that case.

Smith for Applicant (Appellant on Appeal to the Privy Council).

da Silva for Respondent (Respondent on Appeal to the Privy Council).

The full form of order was as follows:—

"Upon Motion made unto the Court this day by Counsel on behalf of the P. & O. Banking Corporation, Ltd., the defendants abovenamed and upon reading the affidavit of William Lionel Stevens sworn to and filed herein on the 30th day of June, 1932, and the affidavits of Tan Hong Tian sworn to and filed herein on the 2nd and 5th days of July respectively and upon hearing Counsel for the applicants and for the plaintiffs IT IS ORDERED that execution and all other proceedings upon the judgment of this Honourable Court dated the 25th day of June, 1932, be stayed provided that the applicants pay to the plaintiffs' solicitor the taxed costs of the appeal to this Honourable Court and the plaintiffs' taxed costs of the trial in the Lower Court within six weeks from the date of this Order upon the undertaking of the Solicitor for the plaintiffs to refund the amount of such costs in the event of an appeal to His Majesty in Council against the judgment of this Honourable Court being allowed AND IT IS FURTHER ORDERED that the sum of $1,904.09 being costs paid by the plaintiffs to the defendants under the judgment herein of the 8th day of December, 1931, be refunded by the defendants to the plaintiffs AND IT IS LASTLY ORDERED that the costs of this application be taxed and paid by the applicants to the plaintiffs in any event."

[APPELLATE CIVIL JURISDICTION]

LOW SOON WAH vs. LOW PENG SOY.

[SINGAPORE SUIT No. 1206 OF 1930]

[APPEAL No. 13 OF 1932]

Defective Memorandum of Appeal. Section 1132 Civil Procedure Code.

In a Memorandum of Appeal the points of law or fact which are alleged to have been wrongly decided must be set out specifically.

If they are not set out specifically the Court of Appeal will refuse to hear the appeal and will adjourn the appeal for a proper Memorandum to be filed, the costs of such adjournment being paid by the Appellant.

Appeal from Supreme Court to Court of Appeal. Singapore, 6th July, 1932.

The Appeal came on for hearing before Murison, C. J., Burton, J., and Terrell, J.

In this case *Palgrave Simpson, Laycock* with him (for the Respondent) took a preliminary objection that the Memorandum of Appeal was defective on the ground that it did not specify the points of law or fact alleged to have been wrongly decided. He referred to the case of *Westerhout* v. *Alkaff* reported on p. 24 of the Malayan Law Journal, Vol. I. No. 1.

Johannes contra submitted that the Memorandum was sufficient.

The Court unanimously held that the Memorandum was insufficient and stated after consultation between the members of the Court that in all future cases where the Memorandum did not specifically set out the grounds of appeal as required by S. 1132 of the Civil Procedure Code they would refuse to hear the Appeal and would adjourn the appeal at the cost of the Appellant until a proper Memorandum was filed.

Solicitors for Appellant—*Johannes & Sammy.*

Solicitors for Respondent—*Braddell Bros.*

The Malayan Law Journal

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NOTES.

What is an Insult.

The recent case of *Emperor* v. *Philip Rangel*, I.L.R. 56 Bom. 196 concerns the utterance of abusive language not amounting to an insult within the meaning of section 504 of the Penal Code. The circumstances which led to the prosecution of the accused in this case were as follows. The accused was a member of a Company. A meeting was convened at the requisition of 26 members including the accused. At the meeting a proposal was put forward for the expulsion of the requisitionists. Thereupon the accused proceeded to leave the meeting and as he was leaving the room, he muttered the words—"you damn bastards and cads". This offensive utterance, though not made to the meeting in general, was overheard by some of the members who attended the meeting. The attention of the Chairman was drawn to this and hence the prosecution. The accused was convicted under section 504 of the Penal Code of intentionally insulting those present at the meeting with intent to provoke a breach of the peace.

The conviction was quashed on appeal to the High Court consisting of Beaumont, C.J. and Broomfield, J. who held as follows:—Section 504 of the Penal Code does not make it an offence to use abusive language which may lead to a breach of the public peace. There must be an intentional insult. Now an insult may be offered by words or conduct, but when the charge is of an intentional insult by words, the words must amount to something more than what in English law is called "mere vulgar abuse". If abusive language is used in such circumstances that the Court comes to the conclusion that it cannot possibly have been intended and cannot have been understood by those to whom it was addressed to have been intended, to be taken literally, then the language cannot be held to amount to an intentional insult. In this case the words used were only vulgar abuse and were not intended to be taken literally. It was held further that, having regard to section 95 of the Penal Code, the Magistrate ought not to have convicted the accused.

* * * * *

Forfeiture of Bond.

The non-observance of certain steps preceding the forfeiture of a bond under Section 514 of the Indian Criminal Procedure Code (corresponding to Sections 412 and 401 respectively of the S.S. and F.M.S. Criminal Procedure Codes) would, according to the decision given in *Nithaldas* v. *Emperor*, I.L.R. 56 Bom. 220, appear to be a fatal irregularity.

In that case the petitioner Nithaldas was convicted on the 20th of August 1931 and sentenced to pay a fine of Rs. 1,000. The trial Magistrate gave him time until the 20th August 1931 to pay the fine. The petitioner entered into a bond whereby he bound himself to appear

before the Court on the 24th August at 11.30 o'clock in the forenoon, failing which the Magistrate would proceed to forfeit the sum of Rs. 1,000 aforesaid. On the application of the petitioner, a further extension of time until the 4th September 1931 was granted.

On the 4th of September 1931 the petitioner did not appear nor did he pay the fine. The Magistrate ordered the enforcement of the forfeiture of the bond under section 514 of the Indian Criminal Procedure Code.

The petitioner appealed against the order of the Magistrate.

The appeal came on for hearing before Beaumont, C.J. and Broomfield, J. who set aside the order. Their decision was based on the grounds that the appellant had bound himself to appear on the 24th August 1931 and no reference was made to the date for payment of the fine, that no fresh bond was executed on subsequent dates and that there was no evidence to show whether the petitioner did appear on the 24th of August 1931.

* * * * *

Pauper's Costs.

The principle upon which costs awarded to a person who has been admitted to sue or defend as a pauper are to be taxed has been a matter of grave concern to the legal profession, and this is particularly so, in view of the frequency with which pauper appeals have recently come before the Court. On the one hand, it has been urged that the costs of a pauper litigant should be taxed on the same footing as in an ordinary case, that is, as if he has paid them. On the other hand, it has been argued that it would be unreasonable for him to expect to be reimbursed for costs which he has never incurred or become liable to pay. The latter view is in consonance with the decision in *Carson* v. *Pickersgill*, 14 Q.B.D. 859. Under section 774 of the Civil Procedure Code the Court or a Judge is empowered to order costs to be paid to a pauper litigant and such costs are to be taxed, in the absence of an order to the contrary, as in other cases. In *Mahawan bin Sakjan* v. *Meera Hoosain* (1929) S.S.L.R. 189 Stevens J. said that he was inclined to the view that the power of awarding costs to a pauper should be exercised whenever "the conduct of his opponent merits condemnation." The learned Judge held in that case that the correct interpretation of the words "as in other cases" referred to in Section 774 was that a pauper is entitled to his full costs as if he is not a pauper, provided he can shew that he has actually paid these costs or that he has become answerable for them. A pauper is said to be liable to pay costs whenever he has incurred costs before his admission to sue as a pauper, and where he has recovered property in the action. Under Section 775 (1) an advocate and solicitor to whom are allowed costs under Section 774 is entitled to a first charge on the property so recovered in respect of the costs. By the same decision, *Carson* v. *Pickersgill* (supra) was held not to apply to this Colony.

In *Oomah Meida binte Hadjee* v. *Moona Jana Shaik Allaudin and ors.* (In Forma Pauperis Suit No. 270 of 1931) and *Low Soon Wah* v. *Low Peng Soy* (Singapore Appeal In Forma Pauperis No. 627 of 1931) the Judges of the Court of Appeal in each case gave a bare direction to tax the pauper's costs as between party and party under S. 774 and ordered a charge for such costs on the property recovered. Such costs when so charged are to be taxed as between party and party as in ordinary cases, but in other cases presumably are to be taxed on the principles laid down in *Mahawan bin Sakjan* v. *Meera Hoosian* (supra). We refrain from expressing any opinion as to the correctness of the decision of Stevens J. noticed above. The fact remains that an advocate and solicitor feels he has not received sufficient incentive to exert his best on behalf of a pauper where the prospect of recovering his full costs as in other cases is dependent upon the liability of the pauper to pay them.

* * * * *

F.M.S. Supreme Court Rules.

In our last issue at page 29 at the end of a note on this subject we asked the question whether the rules in force governing the procedure and practice in the Federated Malay States would *de facto* become law in the State of Johore. We now notice from the Johore Gevernment Gazette dated August 16, 1932 that a bill will shortly be introduced into the Council of State amending Section 74 (1) of "The Courts Enactment, 1920." This Section would be

amended by adding at the end of it the following words:—

> "Except that the provisions of 'The Rule Committee (Supreme Court) Enactment, 1930' of the Federated Malay States shall not be deemed to be law in the State."

In the Objects and Reasons the Legal Adviser says *inter alia*:—

> "At present the adoption of some of the rules recently made by the Rule Committee is not desired in Johore and, in order to make it quite clear that such rules shall not apply here, this bill is drafted."

* * * * *

SIR EDWARD O'MALLEY.

DEATH OF A FORMER CHIEF JUSTICE.

We regret to record the death of Sir Edward O'Malley, a former Chief Justice of the Straits Settlements, who passed away at London on the 17th of August last at the ripe old age of 90.

Sir Edward was an outstanding personality in the Judiciary of the country and his name was associated with many historic cases which came before the Courts in the early days.

A son of Peter Frederick O'Malley, Q.C., he graduated at Trinity College, Cambridge, in 1864 and was called to the Bar two years later. After a brief but eventful career in English politics Sir Edward was appointed Attorney-General of Jamaica in 1876 and in 1879 he was appointed to Hong Kong in a similar capacity. Sir Edward was appointed Chief Justice of the Straits Settlements in 1889 and relinquished his post in 1892 when he went home on retirement.

Sir Edward was extremely popular and his judgments were so sound that they invariably stood against any possible appeals. His work on the draft Criminal Procedure Code of 1892 which was one of his brilliant contributions towards the administration of justice became law, with certain amendments in 1900, and although it has since been reamended and re-enacted is the Code in force today.

His services were sought for even after his retirement for he was called upon to fill the Chief Justiceship of British Guiana in 1895 and a similar appointment of H. B. M's Ottoman Empire in 1898. He finally retired in 1903.

Sir Edward married Miss Emma Winifred Hardcastle, daughter of Mr. J. A. Hardcastle, M.P., in 1869. There were two sons and two daughters of the marriage. Lady O'Malley predeceased Sir Edward in 1927.

MISCELLANEOUS.

Dr. C. H. Withers-Payne, the Hon. Secretary of the Singapore Bar Committee, has just returned from leave after spending his holiday in Europe. We congratulate Dr. Withers-Payne on the recent honour of Doctor of Civil Law conferred on him.

Mr. P. Storr who was acting in his place during his absence has left for Europe on furlough.

* * * * *

Messrs. Mendis and Ahlip, who have been practising for some time in Penang, have commenced their practice in Singapore at No. 24, Raffles Place. We wish them every success.

PRACTICE NOTE.

Submitting "No Case to Meet."

The following circular which was circulated to members of the Singapore Bar on the 22nd July 1930 appears to have been forgetten and the decision of the Council of Judges therein mentioned seems to have escaped the attention of even some of the Judiciary. We therefore think it desirable to print this circular so as to put it clearly on record.

"The practice of the Courts in England in cases where counsel for the defence desires to submit at the conclusion of the plaintiff's case that there is no case to answer differs in the King's Bench Division and the Chancery Disision. In the former Division, at the close of the Plaintiff's case counsel for the defence may submit that there is no case to answer but in the latter Division if he does this the Judge will inform him that if he wishes so to do, he must first elect to call no evidence.

My Committee, being of the opinion that it was highly desirable that the practice in the Supreme Court of this Colony should be definitely settled, and further that the practice of the

King's Bench Division in England should be followed, wrote to the Registrar of the Supreme Court requesting him to obtain a ruling of the Council of Judges. On the 19th July 1930 the Registrar of the Supreme Court informed my committee that he was directed by the Council of Judges to state that the King's Bench practice would be followed in the Courts of this Colony in future.

Dated 22nd day of July 1930.

(Sd.) **C. H. Withers-Payne,**
Honorary Secretary,
Singapore Bar Committee."

A REVIEW.

"MALAYAN LEGISLATION."

Mr. Justice a Beckett Terrell belongs to a family that has for some generations produced lawyers of learning and repute. Prior to his elevation to a judgeship in the Courts of the Straits Settlements and the Federated Malay States last year, he had practised in Malaya as an Advocate and Solicitor for almost a quarter of a century. His book "Malayan Legislation and its Future" (published in Singapore by the Malaya Publishing House Limited, 1932), examines a subject which he is eminently fitted to enquire into. And indeed, although the work contains 91 pages of reading, it is filled with such thought-compelling observations, that one is moved to remark that the author has performed a singular service to Malaya, its Legislators, Administrators and Peoples.

The Constitutional Theory in England propounds the acceptance of the Sovereignty of Parliament and the Rule of Law. "The Sovereignty of Parliament means that Parliament has the right to make or unmake any law whatever and that no person or body is recognised by the Law of England as having a right to override or set aside the legislation of Parliament." "By the 'Rule of Law' is meant not only that no man is above the law but that every man whatever be his rank or condition is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals." The average layman is aware that only Parliament can make and unmake laws and that His Majesty's Judges are the rightful interpreters of such laws. In 1929 the Lord Chief Justice of England burst a bombshell when he published "The New Despotism." That book created a sensation, and as is usual in such matters, there were reviewers and writers for and against it. The immediate repercussion of Lord Hewart's book was the Lord Chancellor's appointment of a Committee, composed of very eminent men, "to consider the powers exercised by or under the direction of (or by persons or bodies appointed specially by) Ministers of the Crown by way of (a) delegated legislation and (b) judicial or quasi-judicial decision, and to report what safeguards are desirable or necessary to secure the constitutional principles of the sovereignty of Parliament and the supremacy of the Law."

The Report of the Lord Chancellor's Committee arrived in this Colony long after Mr. Justice Terrell's book was in the hands of its publishers; and it is remarkable, (as indicating the author's correct attitude towards his subject and his ability to deal with it), that his observations are entirely in harmony with the findings and recommendations of the Lord Chancellor's Committee. In a foreword to the book Mr. Justice du Parcq says, "I am writing these words on the day after the publication of the Committee's report. It would be wrong to attempt any discussion of it here. I will only say that its recommendations emphasize the need for continued and systematic vigilance if it is desired to ensure the supremacy of Parliament as the law-making authority and the supremacy of the Courts as interpreters of the law." On page 9 of his book Mr. Justice Terrell observes, "Within recent years the principles of the Sovereignty of Parliament and the Rule of Law have been subjected to continual attacks by the executive and the extent to which such attacks have been successful will be noticed later in this chapter. In the meantime it is sufficient to point out that if bureaucratic tyranny is to be avoided ceaseless vigilance is required to preserve the principles which are supposed to be an Englishman's birthright and the foundation of his liberties. Such vigilance may to some extent be exercised through the Press but in the long run the maintenance of our institutions rests upon Members of Parliament, or, in the Colony, upon the Members of the Legislative Council, as it is only through their

active help that the safeguards of our constitution can be maintained, just as it is only through their indifference that they may be lost." Oh ye Members of the Legislative Council, be pleased to read, mark and inwardly digest what the learned author has written. In this connection it might not be out of place to recall the parting injunction uttered to Members of the Singapore Bar by a former Chief Justice of this Colony (Sir Walter Shaw), on his retirement. That learned Chief Justice enjoined the Bar that they should always guard and maintain the independence of the Bench. Sir Walter Shaw no doubt had in mind that His Majesty's Courts of Law were the proper places for the interpretation of the law and that the Judges therein would brook no interference from the Executive.

On page 14 of the book Mr. Justice Terrell says:— "Lord Hewart summarises the successive encroachments of the ardent bureaucrat in England as follows:—

(a) to get legislation passed in skeleton form;

(b) to fill up the gaps with his own rules, orders and regulations;

(c) to make it difficult or impossible for Parliament to check the said rules, orders and regulations;

(d) to secure for them the force of statute;

(e) to make his own decision final;

(f) to arrange that the fact of his decision shall be conclusive proof of its legality;

(g) to take power to modify the provisions of statute; and

(h) to prevent and avoid any sort of appeal to a Court of Law."

To the average citizen a British Court of Law stands for everything that safeguards his rights and liberties. It is therefore the duty of all British citizens to guard against any bureaucratic encroachment tending to close the door that leads to an appeal to a Court of Law. This is one of the main themes of Mr. Justice Terrell's book. His style is terse, concise and logical, and the book is informative, entertaining and instructive. Like the sound lawyer he is, he has much that is worth saying, but manages to say it in the fewest words possible. Throughout the book the author exercises calm and judicial restraint, even when he exposes some glaring defects and dangers in our "delegated legislation." It is when he analyses the Ordinances of the Colony and tabulates them for purposes of examining the extent of the delegation of Legislative and Judicial powers to the Executive, that one realises how great the danger can be. It would be quite true to remark that the ordinary layman has no idea to what extent he may be at the mercy of the Legislative or Executive Councillor. How many people realise the difficulties that beset a conscientious draftsman of Rules that must be *intra* and not *ultra vires*. A perusal of Chapter 2 of this book would make the average man "sit up and think."

Chapter 3 deals with the Legislative tive Chaos in the Malay States, and in Chapter 4 the author offers some suggestions for the future of Malayan Legislation. For this reason alone we would say that the book has not made its appearance too soon. It is to be hoped that the powers that be will be moved, at an early date, to examine the author's observations and suggestions. He can claim the right to recognition by virtue of his long and almost unrivalled personal experience of the conditions of Malaya extending for nearly 25 years.

The author makes many very pertinent observations, but his criticism is always constructive and never destructive, couched as it is in language of extreme moderation. The public of Malaya owe a debt of gratitude to the learned author for producing a book which intimately concerns all persons, rich or poor, high or low, without distinction of race or creed. This book should stand as one of fthe landmarks of Malayan Government and Legislative History.

E.